

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 68 of 2002.

Saleem Kalam Khan
occ driver resident of
Laxman Javalkar Chawl
Kasarwadi Pune

..Appellant

VS

The State of Maharashtra

...Respondent

Mr Shiv Motoria for appellant.

Dr F R Shaikh, Addl Public Prosecutor for State.

**CORAM:V.G.PALSHIKAR, Acg, C.J.&
Smt. NISHITA MHATRE J.**

DATE: SEPTEMBER 5, 2006.

JUDGMENT(Per PALSHIKAR, Acg, C.J):-

This appeal by the accused is directed against the order dated 6.10.1001 passed by the Additional Sessions Judge, Pune in Sessions Case No.194 of 2001, convicting the accused as under:

1)Under section 302 of I.P.C.

Life imprisonment and also to pay fine of Rs.1000/-, in default R.I for 6 months.

2)Under section 498A of I.P.C.

R.I. For one year and to pay a fine of Rs.500/- in default R.I. for one month.

2. With the assistance of the learned Additional Public Prosecutor appearing for the State and the learned advocate for the appellant-accused, we have scrutinised the record and reappreciated the evidence on record. The prosecution case as disclosed by the reappreciation of the evidence stated briefly is that the accused and the sister of the complainant were married and after some time the marriage was not as smooth as it ought to be. There were bickerings between the husband and wife, which, as usual, were ignored by the family. On 7th September, 2000 the complainant went to the house of his father at about 8 p.m., saw some crowd there and the accused beating his sister Rehana and abusing her and threatening her to kill. She was rescued by the complainant.

3. On 8th September, 2000 at about 8 a.m. the accused went to the house of his in-laws and demanded apology from them for the incident that occurred earlier and undertook not to ill treat his wife. At around 2 p.m. the complainant came to know that the accused has stabbed his wife and accordingly a complaint was lodged with the police. The prosecution has examined twelve witnesses to prove its case and the learned trial judge, on appreciation of that evidence came to the conclusion that the accused was guilty of both offences, on

which he was charged and, therefore, proceeded to convict him as mentioned above.

4 This order of conviction is assailed by the learned advocate appearing on behalf of the accused on several grounds. Basically the contention of the learned advocate is that the entire evidence consists deposition of persons who were highly interested in the outcome of the prosecution. They were closely related to victim. Admittedly according to the statement of the complainant P.W.1, a crowd had gathered when the first assault took place on 7th September, 2000. Adequate evidence regarding the second assault, which resulted in death of the victim was also available, which was of independent nature and the prosecution has failed to prove by cogent independent evidence on the charge of murder. This submission of the advocate for the appellant has been countered by the learned Additional Public Prosecutor appearing on behalf of the State who pointed from the evidence on record that each finding recorded by the learned trial judge is duly supported by the evidence on record. Merely because some witnesses are related to the victim it cannot be said that their statement or deposition are liable to be rejected on that count. According to him the order of conviction is liable to sustained.

5. We have appreciated these contentions in light of the evidence as reappreciated by us. P.W.1 is the complainant. He was brother of the deceased i.e. wife of the accused. He has deposed to the earlier ill treatment as also beating on 7th September, 2000. He also speaks of calls received and lodging of the complaint. This witness has proved FIR lodged by him and he has proved his deposition in spite of lengthy and searching cross examination by the advocate for the accused. He is not shaken at all and very firmly deposed about the ill treatment meted out to the victim by the accused. His evidence is duly corroborated by the independent witness who was residing in the neighborhood of the deceased and he corroborates P.W.1 completely on the earlier incident of 7th September, 2000.

6. It is note worthy in this case that P.Ws 3 and 4 are child witnesses. They are the children of the victim born out of her first wed-lock. Both of them deposed in court that their mother victim was ill treated by the accused on several occasions and on some occasions they were present. P.W. 3 has stated that when she returned home at about 1.30 p.m. she saw the victim lying on the ground injured in blood

stains. The television was on and was in a very loud volume. In this regard she is duly corroborated by P.W. 7 Washid who also speaks of television going on in loud volume. Taking into consideration the corroboration of the child witnesses by independent evidence, the learned trial judge found that the accused was the person who assaulted the victim. P.Ws. 7 and 8 are independent witnesses who saw accused immediately after the incident. They also found corroborated account given by P.Ws 1,3 and 4.

7. The prosecution has also proved recovery of knife used by the accused, the recovery was at the instance of the accused, the panch witness P.W. 6 proves the same recovery. Panchnama of the spot is also duly proved. P.W. 9 Doctor has proved that the death of the victim was a homicidal one. P.W.10 is another independent witness who corroborates material witnesses. P.Ws. 3 and 4 in relation to the house being chained from outside and the discovery of body lying in blood stains. The investigating officer has also been examined and proved all the necessary formalities which he took as investigating officer.

8. It was appreciation of this evidence that the learned trial judge found the accused guilty. Perusal of the impugned judgment discloses that the findings as recorded by the trial judge are based on sound evidence. They are arrived at after application of correct proof of evidence proved on record. We are therefore in total agreement with the findings recorded by the trial judge. That being the case, in our opinion, there is no substance in this appeal and the same is liable to be dismissed. It is accordingly dismissed.